SINGLE BENCH

1001—

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P.No.3823 / 2006

Petitioner : Ramesh Jayaswal
S/o Shri Basant Lall Shaw, Aged about 41 years, Joint Managing Director, Jayaswals Neco Limited, Regd. Office at F-8 MIDC, Hingna Road, Nagpur – 16 (Steel Plant Division) Siltara, Raipur, PS Dharsiva, Distt. Raipur (C.G.)

E.R. No. 3883/06
Presented by Shri Kunal Das
Dated 24/7/06

Versus

Respondents :
1) The State Industrial Court, Chattisgarh – Through its President, Raipur, Distt. Raipur (C.G.)
2) The Labour Court – Through its Presiding Officer, Raipur, Distt. Raipur (C.G.)
3) Pradeep Kumar Sengupta, S/o Shri N.N.Shah, Aged about 39 years, R/o G-6, B.T.I. Colony, Shankar Nagar, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR (23)

9.11.06

HIGH COURT OF CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J

WRIT PETITION NO. 3823 OF 2006

Petitioner — **Ramesh Jayaswal**

Versus

Respondents — **The State Industrial Court, Chhattisgarh & Others**

O R D E R

(Dated 9th November, 2006)

Sd/-
Satish K. Agnihotri
Judge

8-11-2006

HIGH COURT OF CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J

WRIT PETITION NO. 3823 OF 2006

Petitioner **Ramesh Jayaswal**

Versus

Respondents **The State Industrial Court, Chhattisgarh & Others**

Present :- Shri P. Diwakar, Sr. Advocate with Shri P.K. Bhaduri, counsel for the petitioner.

Smt. Anju Ahuja, Dy. Govt. Advocate for the respondents No.1 and 2.

Shri Pradeep Kumar Sengupta, respondent No.3, appears in person.

Shri N.K. Agrawal, Sr. Advocate appears as amicus curiae.

O R D E R

(Dated 9th November, 2006)

The present petition filed under Article 226/227 of the Constitution of India, impugns the order dated 19-7-2006 (Annexure-P/7) passed by the Industrial Court whereby the revision against the order dated 20-2-2006 passed by the Judicial Magistrate First Class (in short "JMFC"), Raipur, was dismissed.

(2) The undisputed facts, in nutshell, are that the petitioner Ramesh Jayaswal is a Joint Managing Director, Jayaswals Neco Limited, having its registered office at Nagpur and a Steel Plant at Raipur. The respondent No.3 namely Pradeep Kumar Sengupta, challenged the order of his termination dated 28-6-2002 before the Labour Court, Raipur, in case No. A-356/M.P.I.R. Act/2002. The Labour Court during pendency

of the case directed the petitioner herein and three others (non-applicants) to pay 50% of salary to the applicant Pradeep Kumar Sengupta (respondent No.3 herein) till disposal of the case in an application filed under Section 84 of the MP/CG Industrial Relations Act, 1960 (for short "CGIR Act").

(3) Being aggrieved, the petitioner herein alongwith three other non-applicants in Labour Court, moved the Industrial Court in appeal and thereafter this Court in writ petition, which were rejected.

(4) The respondent No.3 filed a complaint (Annexure-P/4) under Section 91 read with Section 35 of the CGIR Act before the JMFC, Labour Court, Raipur, praying that the non-applicants be dealt with under provisions of Section 91 of CGIR Act. It was further prayed that the petitioner be punished with payment of Rs.5000/- per day and three months imprisonment for non-compliance of the order dated 3-3-2003 passed by the Labour Court in case No.A-356/M.P.I.R. Act/2002. Notices were issued to the petitioner on 6-7-2004.

(5) The petitioner did not appear in person, but his appearance was made through Advocate. The petitioner filed an application for exemption from personal attendance under Section 205 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") for dispensing with personal attendance of accused. JMFC by order dated 4-1-2006 considered the application of the petitioner and accepted the prayer subject to condition that the petitioner would appear before the JMFC on 20-2-2006

and execute a personal bond for a sum of Rs.10,000/- and further deposit a sum of Rs.10,000/- in the Court.

(6) On 20-2-2006, the petitioner filed another application under Section 317 of the Cr.P.C. for holding the trial in the absence of the accused i.e. the petitioner. The JMFC after considering the application adjourned the matter to 21-3-2006 for compliance of the order dated 4-1-2006 whereby the application of the petitioner under Section 205 of the Cr.P.C. was accepted subject to personal appearance and payment of Rs.10,000/- & production of a personal bond for a sum of Rs.10,000/-. Bailable warrant for a sum of Rs.20,000/- was accordingly issued. The petitioner remained absent throughout.

(7) The trial Court, having examined all the facts and looking into the conduct of the petitioner rejected the application under Section 317 of the Cr.P.C. by order dated 20-2-2006 and directed issue of bailable warrant for a sum of Rs.20,000/- for ensuring presence on the next date of hearing.

(8) Being aggrieved by the order dated 20-2-2006, the petitioner filed the revision under Section 397 read with Section 482 of the Cr.P.C. alongwith Section 64(A) of CGIR Act, on several grounds, *inter alia*, that the applicant (respondent No.3) has already been paid a sum of Rs.1,65,332/- pursuant to the order dated 3-3-2003 passed by the Labour Court. It was contended in the revision application that the petitioner was not liable personally as the order of the Labour Court was to be complied with by non-applicants 1, 2 & 3 also and they

have complied with the order by making payment of 50% of salary to the applicant (respondent No.3).

(9) The Industrial Court in Cri.M.Case No.04/C.G.I.R. Act/V/2006 by order dated 19-7-2006 (Annexure-P/7) dismissed the revision and confirmed the order dated 20-2-2006 passed by the JMFC, Labour Court, Raipur.

(10) The petitioner has impugned the order dated 19-7-2006 passed by the Industrial Court whereby the order dated 20-2-2006 passed by the JMFC directing for issue of bailable warrant for a sum of Rs.20,000/- was under consideration, was confirmed.

(11) The petitioner has not challenged the order dated 4-1-2006 passed by JMFC, Labour Court, Raipur, whereby the application of the petitioner filed under Section 205 of the Cr.P.C. was allowed subject to presence of the petitioner on 20-2-2006 in the Court for executing personal bond for a sum of Rs.10,000/- and for depositing a sum of Rs.10,000/- in the Court.

(12) The order dated 20-2-2006, which was subject matter before the Industrial Court in revision i.e. Cri.M.Case No.04/C.G.I.R. Act/V/2006 (Annexure-P/7) only provided for issue of bailable warrant for a sum of Rs.20,000/-. After the criminal revision was dismissed the matter was listed before the JMFC, Labour Court on 20-7-2006. The petitioner filed one more application under Section 317 of the Cr.P.C. The Court after hearing the parties rejected the same in view of the fact

that the order dated 4-1-2006 passed in an application under Section 205 of the Cr.P.C. was not complied with. Warrant of arrest was issued for ensuring presence of the petitioner on next date of hearing i.e. 17-8-2006. The petitioner has not challenged the order dated 20-7-2006 before the Industrial Court.

(13) Shri Diwakar, learned Sr. counsel appearing with Shri P.K. Bhaduri, learned counsel, submitted that the order of the Industrial Court is bad in law as the Labour Court has failed to appreciate that the total payment of 50% as directed by the Labour Court in order dated 3-3-2003, has already been paid to the applicant/respondent No.3 by non-applicants No.1, 2 & 3 who are the proper persons for making the payment. He further submitted that the presence of the petitioner in the pending trial before JMFC is not necessary for conduct of the trial. Learned counsel submits that the petitioner is ready and willing to pay even the interest on the amount paid by non-applicants No.1, 2 & 3 after some delay. Learned counsel further submitted that since the petitioner had complied with the order dated 3-3-2003 passed by the Labour Court there is no reason to insist on presence of the petitioner. The JMFC acted *mala fide* while discharging other accused on 4-11-2004 and proceeded against the petitioner for the same alleged offence committed by all the 4 non-applicants before the Labour Court. Learned counsel relies upon the decisions of Supreme Court in the cases **Amar Nath and other vs. State**

of Haryana and others[1], **Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd. and others**[2] and the decision of this Court in the case of **V.K. Punshi vs. State of M.P. (Now C.G.) & Others**[3].

(14) Respondent No.3, the complainant, on the contrary submitted that the petitioner has deliberately not complied with the order dated 4-1-2006 passed by the JMFC which amounts to undermining the dignity and majesty of judicial process. The petitioner, it appears, feels that he is big enough and he cannot be subjected to any jurisdiction before the JMFC. Respondent No.3 further submitted that this petition be dismissed with heavy costs.

(15) Learned counsel appearing for the State, on the contrary, submitted that the petitioner has failed to comply with the undertaking given by the counsel at the time of hearing of application under Section 205 of the Code of Criminal Procedure. Learned counsel further submitted that the petitioner has flouted judicial orders passed by the Labour Court and Industrial Court on several occasions.

(16) Having heard learned counsel for the petitioner, it is evident that the petitioner has not honoured the order dated 4-1-2006 whereby the application of the petitioner under Section 205 of the Cr.P.C. was ordered subject to the condition that the petitioner would remain present on 20-2-2006 and execute a personal bond for a sum of Rs.10,000/- and further

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[1] AIR 1977 SC 2185
[2] (2001) 7 SCC 401
[3] 2004(2) CGLJ 55

depositing a sum of Rs.10,000/- in the Court. On the next date of hearing i.e. 20-2-2006 when the petitioner failed to comply with the conditions granted in the order dated 4-1-2006, the JMFC issued bailable warrant for a sum of Rs.20,000/- directing the petitioner to be present on 21-3-2006. It must be made clear that the order dated 4-1-2006 whereby the application of the petitioner under Section 205 of the Cr.P.C. was allowed subject to some conditions was not challenged in any Court. On 21-3-2006 the petitioner again remained absent and informed the Court of JMFC that pending revision before the Industrial Court, the order dated 20-2-2006 for issuing bailable warrant be stayed. In the meantime, the petitioner filed one more application under Section 317 of the Cr.P.C. for granting absence of the petitioner in enquiry or trial pending before the JMFC. The JMFC by order dated 20-7-2006 rejecting the application on the ground that the petitioner has not complied with the earlier orders dated 4-1-2006 & 20-2-2006 and arrest warrant was issued accordingly to remain present on 17-8-2006. The impugned order dated 20-7-2006 is under consideration in this petition. The decision of the Supreme Court in the case of **Amar Nath** (supra)[1] is not applicable in the facts of the present case as the main issue involved in the said case was as to whether order passed by the Magistrate refusing personal appearance is interlocutory or final. It is no longer *res integra* that order passed by the Magistrate in applications under Sections 205 & 317 of the Cr.P.C. is not an interlocutory order for the purpose of filing revision against the said order.

(17) The Supreme Court in the case of **Bhaskar Industries Ltd.** (supra)[2] (at para 8) observed as under :

> *"**8.** The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior Court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate ? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."*

(18) It is true that the offence involved in the instant case is triable as summons case and is not serious in nature wherein the presence of the accused is not very much necessary looking into the facts and circumstances of the case. The Supreme Court in the case of **Usha K. Pillai vs. Raj K. Srinivas and others**[4] while dealing with the dispensation of personal presence of the accused observed that even in cases where the personal presence of the accused has been dispensed with Section 205(1) or Section 317 of the Code the Magistrate can dispense with the mandatory requirement of clause (b) of Section 313(1) only in a summons-case i.e. a case other than a warrant-case. Summons-case and warrant-case has defined in the Cr.P.C. as under :

> *"2(w) 'summons-case' means a case relating to an offence, and not being a warrant-case;*
>
> *2(x) 'warrant-case' means a case relating to an offence punishable with death, imprisonment*

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[4] (1993) 3 SCC 208

for life or imprisonment for a term exceeding two years;"

(19) The punishment provided under Section 91 of the CGIR Act is maximum three months and with fine extendable up to Rs.5000/- or with both. This is a summons case.

(20) The Supreme Court in the case of **Chandu Lal Chandraker vs. Puran Mal and another**[5], granted exemption from personal appearance in summons case wherein the accused gave undertaking that he would not raise the question of prejudice, if any, caused to him on account of his non-examination at subsequent stage of trial, in appeal or revision. The Supreme Court in the case of **Basavaraj R. Patil and others vs. State of Karnataka and others**[6], by majority observed that his physical presence in the Court on account of justifying exigency can be ordered in an application accompanied by an affidavit sworn to by the accused himself containing the following maters :

"(a) A narration of facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers.

(b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.

(c) An undertaking that he would not raise any grievance on that score at any stage of the case."

(21) The decision of Orissa High Court in the case of **Raghunath Das and others vs. Hari Mohan Pani**[7], cited by learned counsel for the petitioner has no relevance to the present case as the High Court has held that it is a matter

[5] 1988 (Supp) SCC 570
[6] (2000) 8 SCC 740
[7] 1988 Cri.L.J. 1573

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between the Court and the accused. So far as a prosecution initiated on complaint, the Magistrate while issuing summons has also power to direct the appearance of an accused through a Lawyer without personally appearing. In the present case the petitioner has never appeared before the Court despite clear orders passed on several occasions to appear in the Court and to execute a bond.

(22) The Calcutta High Court in the case of **Ajit Kr. Chakraborthy and others vs. Serampore Municipality**[8], cited by learned counsel for the petitioner, while considering the appearance of the petitioner in an application under sub-section (1) of Section 205 of the Cr.P.C., laid emphasis on the discretion of the Magistrate to grant exemption from personal attendance.

(23) The Orissa High Court in the case of **K. Narayan Patra vs. Gopinath Sahu**[9], cited by learned counsel for the petitioner, held as under :

> *"**4**.....As words 'if he sees reason so to do' indicate power conferred by Sec. 205(1) is discretionary, and no hard and fast rule can be laid down. The question as to when such discretion has to be exercised has to be considered after giving due consideration in the attendant circumstances. No sweeping generalization can be made. Courts should be generous in exempting accused persons from personal appearance. Such appearance is the rule in criminal cases of a serious nature, involving moral turpitude, and punishable with imprisonment for some length of time. Court should consider the nature of aberration alleged, prima facie material for acceptance of such allegation, possibility of mala fide allegation, prejudice if any likely to be caused if personal*

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[8] 1989 Cri.L.J. 523
[9] 1991 Cr.L.J. 3219

(254)

attendance is not made. Court has to weigh inconvenience likely to be caused to accused if he is required to be absent from his vacation, profession, trade, occupation and calling for attendance in Court, against prejudice likely to be caused if he does not appear in Court. Whenever personal attendance is insisted upon, there is undubitably some harassment to the accused; and the Courts have to see that this harassment is not out of proportion to the seriousness of the allegation, the severity of possible punishment on conviction, nature of allegations as they stand out prima facie. As indicated above, no hard and fast rule can be laid down but the Court is expected to exercise its discretion after seeing full picture....."

(24) The Orissa High Court in the case of **Kaveri alias Benga and another vs. The State**[10], cited by learned counsel for the petitioner, held as under :

*"**4**.....The exceptions are contained in Sections 205, 291, 292, 293, 299 and 317. While dealing with an application for dispensing with the personal attendance the Court should not take too technical or stringent view. The approach should be to see whether personal appearance is absolutely necessary for purpose of the case. That does not appear to have been done in the instant case. It is, however, true that in the charge-sheet, petitioners have been shown as absconders. Learned counsel for petitioners submitted that the petitioners are married women and were residing with their respective in-laws, and there was no scope of their absconding or fleeing from justice."*

(25) Decision of this High Court in the case of **V.K. Punshi** (supra)[3], relied on by the petitioner, is not applicable to the facts of the present case as the question raised and decided in the said case was as to whether an order requiring personal attendance of accused is not an interlocutory order. This High Court observed as under :

*"**16**.....It is within the powers of a Magistrate and in his judicial discretion to dispense with the*

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[10] 1995 Cr.L.J. 224

personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice.

21. *However, as per the provisions of sub-section 2 of Section 205 and sub-section 2 of Section 317 of the Cr.P.C. discretion has been given to the Court that if the Magistrate considers the personal attendance of the accused necessary for reasons to be recorded, he can enforce such attendance of the accused and this discretion as per settled law the Magistrate must exercise in a judicious manner. When Magistrate feels that for particular reason and particular purpose the personal attendance of the accused is necessary in the case, therefore, after assigning the reason as to why the presence of the accused is required on that day, he can within his rights order for enforcing such attendance of the accused."*

(26) On perusal of the orders passed by the JMFC, it appears that the Magistrate has not examined the facts and circumstances of the case while rejecting the applications of the petitioner filed under Sections 205 & 317 of the Cr.P.C. This being a summons case the Magistrate ought to have considered all the relevant facts while deciding the applications under Sections 205 & 317 of the Cr.P.C. It appears that while dealing with the applications filed by the petitioner under Sections 205 & 317 of the Cr.P.C., the Court has taken stringent view. The Court ought to have seen as to whether personal appearance is absolutely necessary for purpose of the case. Hence the impugned orders dated 19-7-2006 passed by the Industrial Court and 20-7-2006 passed by the JMFC,

Labour Court, Raipur are perverse and deserve to be set aside. The petitioner is exempted from personal appearance subject to filing of an affidavit sworn to by the petitioner himself containing the following conditions :

> *"(a) A narration of facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers.*
>
> *(b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.*
>
> *(c) An undertaking that he would not raise any grievance on that score at any stage of the case."*

(27) The petitioner is accordingly directed to appear through Advocate before the JMFC, Labour Court, Raipur, on 1st December, 2006 and file appropriate affidavit of undertaking as stated above. The JMFC is directed to proceed with the matter on merit without being influenced by any observations made hereinabove. It is made clear that if personal appearance of the petitioner/accused in the case, at any particular stage, is required and it is felt judicially & absolutely necessary, the Court shall be at liberty to do so.

(28) This petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

GOWRI